

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

IN RE WASHINGTON MUTUAL
MORTGAGE BACKED SECURITIES
LITIGATION,

This Document Relates to: ALL CASES

MASTER CASE NO. C09-037 MJP

**DECLARATION OF NICHOLAS A.
JACKSON IN SUPPORT OF
DEFENDANTS' MOTION TO
PRECLUDE USE OF UNTIMELY
DISCLOSED EXPERT OPINIONS OF
IRA HOLT AND CHARLES D. COWAN
PURSUANT TO FED. R. CIV. P. 37(c)(1)**

*Declaration of Nicholas A. Jackson in Support
of Defendants' Motion to Preclude Use of
Untimely Disclosed Expert Opinions of Ira Holt and
Charles D. Cowan Pursuant to Fed. R. Civ. P. 37(c)(1)
(CV09-037 MJP)*

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1 I, NICHOLAS A. JACKSON, hereby declare as follows under penalty of
 2 perjury pursuant to 28 U.S.C. § 1746:

3 1. I am an attorney at law licensed to practice in the State of New York. I am
 4 an associate of the firm of Cravath, Swaine & Moore LLP, counsel of record for
 5 Defendants WaMu Asset Acceptance Corp. and WaMu Capital Corp. (collectively, the
 6 “WaMu Defendants”) in this matter. I submit this declaration in support of Defendants’
 7 Motion to Preclude Use of Untimely Disclosed Expert Opinions of Ira Holt and Charles
 8 D. Cowan Pursuant to Fed. R. Civ. P. 37(c)(1). By virtue of my representation of the
 9 WaMu Defendants in this matter, I have personal knowledge of the facts set forth below,
 10 or knowledge based on information and belief, and could and would testify competently
 11 to those facts if called to do so.

12 2. The Daubert Motion Declaration of Ira Holt, dated May 25, 2012 (Dkt.
 13 425-1) and the Daubert Motion Declaration of Charles D. Cowan, dated May 25, 2012
 14 (Dkt. 425-2), both state that Mr. Holt and his staff have purportedly re-underwritten
 15 1,027 additional loans since March 2, 2012, the date of Mr. Holt’s expert report. To date,
 16 Plaintiffs have not provided Defendants with any reports, data, or other information in
 17 any form relating to the content or underlying basis of Ira Holt’s or Charles D. Cowan’s
 18 purported opinions regarding these 1,027 additional loans. Plaintiffs also have not
 19 provided Defendants with any information concerning which loans Mr. Holt has
 20 reviewed since March 2, 2012 or which loans he has deemed defective.

21 3. According to Mr. Holt’s March 2, 2012 report, his re-underwriting review
 22 was based on an online “survey” completed by staff working under his direction. (Expert
 23 Report of Ira Holt, dated March 2, 2012, at 15 (Dkt. 407-1).) The responses to that
 24 survey were contained in an Excel spreadsheet produced by Plaintiffs in connection with

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1 Mr. Holt's report, and included numerous references to certain "formula worksheets."
2 On March 13, 2012, Plaintiffs produced to Defendants 423 "formula worksheets" in
3 Excel format. Each of those spreadsheets contains information recorded and calculations
4 performed by Mr. Holt and/or his staff in connection with their review of particular loan
5 files.

6 4. I have reviewed the 423 formula worksheet files produced by Plaintiffs in
7 their original, unaltered format. All of the files contained metadata indicating the date
8 and time the file was first created. Many files also included a date as part of the filename.
9 The earliest date indicated by either the filename or the "date created" metadata of any of
10 the 423 files was February 2, 2012.

11 5. The Court's scheduling order provided for the exchange of initial expert
12 reports on February 28, 2012 and rebuttal reports on March 27, 2012. (Dkt. 335.)
13 Plaintiffs requested and Defendants agreed to extend those dates to March 2 and March
14 30, 2012, respectively, which had no impact on the deadlines for any Court filings.

15 6. Attached as Exhibit 1 is a true and correct copy of a letter from Matthew
16 S. Jackson to Joshua S. Devore, dated July 25, 2011, enclosing the initial production of
17 loan origination files in electronic form.

18 7. Attached as Exhibit 2 is a true and correct copy of a letter from Matthew
19 S. Jackson to Joshua S. Devore, dated September 10, 2011, enclosing the final production
20 of loan files in electronic form.

21 8. Attached as Exhibit 3 is a true and correct copy of a letter from Matthew
22 S. Jackson to Joshua S. Devore, dated September 6, 2011.

23 9. Attached as Exhibit 4 is a true and correct copy of a letter from Wes
24 Earnhardt to Plaintiffs' Counsel, dated March 14, 2012.

25
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1 I hereby declare, under penalty of perjury under the laws of the United
2 States of America, that the foregoing is true and correct.

3 DATED this 7th day of June, 2012, at New York, New York.
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Nicholas A. Jackson

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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of June, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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10 DATED this 7th day of June, 2012 at Seattle, Washington.

11 By: /s/ Louis D. Peterson
12 Louis D. Peterson, WSBA #5776
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Exhibit 1



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July 25, 2011

By FedEx

Mr. Joshua S. Devore
Cohen Milstein
1100 New York Ave. NW
Suite 500 West
Washington, DC 20005

Re: *In re Washington Mutual Mortgage Backed Securities Litigation*, 2:09-cv-00037-MJP (W.D. Wash.)

Dear Josh:

Pursuant to the subpoena served on JPMorgan Chase Bank, N.A. ("Chase") on October 27, 2010 and the agreement between Chase and plaintiffs, enclosed is the initial production of loan origination files. The Bates range for this production is JPMWaMuMBSLF0000000001 - JPMWaMuMBSLF0000308706.

Regards,

A handwritten signature in black ink, appearing to read "Matthew S. Jackson".

Matthew S. Jackson

MJ:dlg

cc: John D. Pernick
Eric S. Mattson

Exhibit 2



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September 10, 2011

By FedEx

Mr. Joshua S. Devore
Cohen Milstein
1100 New York Ave. NW
Suite 500 West
Washington, DC 20005

Re: *In re Washington Mutual Mortgage Backed Securities Litigation*, 2:09-cv-00037-MJP (W.D. Wash.)

Dear Josh:

Pursuant to the subpoena served on JPMorgan Chase Bank, N.A. ("Chase") on October 27, 2010 and the agreement between Chase and plaintiffs, enclosed is the twelfth production of loan origination files. The Bates range for this production is JPMWaMuMBSLF0007991587 - JPMWaMuMBSLF0008440993.

Regards,

A handwritten signature in black ink, appearing to read "Matthew S. Jackson".

Matthew S. Jackson

MJ:dlg

cc: John D. Pernick
Eric S. Mattson

Exhibit 3



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September 6, 2011

By FedEx

Mr. Joshua S. Devore
Cohen Milstein
1100 New York Ave. NW
Suite 500 West
Washington, DC 20005

Re: *In re Washington Mutual Mortgage Backed Securities Litigation*, 2:09-cv-00037-MJP (W.D. Wash.)

Dear Josh:

Pursuant to the subpoena served on JPMorgan Chase Bank, N.A. ("Chase") on October 27, 2010 and the agreement between Chase and plaintiffs, enclosed is a production of loan underwriting guidelines. The Bates range for this production is JPMWaMuMBSUG00000000001 to JPMWaMuMBSUG0000287529.

Regards,

Matthew S. Jackson

MJ:dlg

cc: John D. Pernick
Eric S. Mattson

Exhibit 4

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March 14, 2012

In re Washington Mutual Mortgage Backed Securities Litigation
No. 09-0037-MJP

Dear Counsel:

I write regarding the reports of Mr. Ira Holt (the "Holt Report") and Dr. Charles D. Cowan (the "Cowan Report"), which Plaintiffs served on March 2, 2012.

Under Federal Rule of Civil Procedure 26(a)(2), you were required to provide "a complete statement of all opinions [Mr. Holt and Dr. Cowan] will express and the basis and reasons for them" and "the facts or data considered by" Mr. Holt and Dr. Cowan in forming their opinions. You failed to do so, and have now forced us to spend 11 days (so far) asking and re-asking for information that we should have received on March 2. To wit:

- On March 3, you provided the backup data and materials for your Reports, despite indicating that you would provide them on March 2 to an FTP site provided by us. Notably, on March 2, we did provide to you via FTP all of the backup materials for all of Defendants' reports.
- On March 5, following two letters from Defendants setting out your disclosure obligations, you produced a PDF version of the "survey" that is at the heart of Mr. Holt's analysis. Only three days later, on March 8, did you produce the native version.
- On March 8, after a repeated request from Defendants, you belatedly produced the sample loan list generated by Dr. Cowan and provided to Mr. Holt. On March 11, again only after prompting by Defendants, you produced the sample loan lists as they were provided to Mr. Holt.
- On March 13, after yet another repeated request by Defendants, you produced 423 worksheets that evidenced the purported reunderwriting and analysis performed on the loans that Dr. Holt included in his report.

Your failure to produce these items on the agreed-upon date has prejudiced our experts' ability to respond to the Reports. The information produced after the deadline – in particular, the worksheets with substantive analysis of underwriting – is critically important to understanding the Reports.

There are now only 16 days left under the current schedule to analyze the information in the Holt and Cowan Reports. That is not the schedule to which the parties agreed. Accordingly, although Defendants will attempt to meet the disclosure deadline, we reserve the right for our experts to take an additional 11 days to respond to the Cowan and Holt Reports.

Very truly yours,



Wes Earnhardt

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